UNITED STATES COPYRIGHT OFFICE

Long Comment Regarding a Proposed Exemption Under 17 U.S.C. § 1201

Please submit a <u>separate</u> comment for each proposed class.

NOTE: This form must be used in all three rounds of comments by all commenters not submitting short-form comments directly through regulations.gov, whether the commenter is supporting, opposing, or merely providing pertinent information about a proposed exemption.

When commenting on a proposed expansion to an existing exemption, you should focus your comments only on those issues relevant to the proposed expansion.

[ ] Check here if multimedia evidence is being provided in connection with this comment

Commenters can provide relevant multimedia evidence to support their arguments. Please note that such evidence must be separately submitted in conformity with the Office's instructions for submitting multimedia evidence, available on the Copyright Office website at https://www.copyright.gov/1201/2018.

ITEM A. COMMENTER INFORMATION

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ITEM B. PROPOSED CLASS ADDRESSED

Proposed Class 12: Computer Programs - 3D Printing

ITEM C. OVERVIEW

Opponent Stratasys fails to articulate copyright harms that would be created by modifying the original exemption - the renewal of which it did not oppose - as requested in this newly proposed exemption. Instead, Stratasys points to harms that could be created in industrial supply chains,[1] airplane safety,[2] occupational safety,[3] and cybersecurity.[4] While these harms

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[1] See Comments of Stratasys, Ltd., *In the Matter of Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, Docket No: RM 2016-10, (Feb. 12, 2018) at 7-8, available at https://www.copyright.gov/1201/2018/comments-021218/class12/Class_12_Opp'n_Stratasys.pdf ["Stratasys Comments"]

[2] *Id.* at 8.

[3] *Id.* at 9.

[4] *Id.*

may be legitimately addressed by federal policy, they are well beyond the scope of copyright law and this proceeding.

Stratasys states that deferring to expert agencies in these non-copyright fields would be "pass[ing] the buck, putting the burden on other agencies to anticipate and regulate the hacking of 3D printers."[5] In Stratasys' description, such deference would "force federal agencies not only to grapple with the changes brought by 3D printers, but to contemplate scenarios where TPMs are legally circumvented, and possibly pass new regulations to ban the circumvention of TPMs on 3D printers within their regulatory arena."[6]

Stratasys and Commenter are in agreement about the possible ramifiations of this exemption request. The proposed exemption would fail to use copyright law to address any real or imagined harms related to airline safety and occupational health. This is because these matters should not be addressed by the Copyright Office through the lens of this proceeding or copyright law more broadly.

Any "challenge"[7] created by deferring to expert agencies to regulate their areas of statutory responsibility is precisely what Congress intended when those expert agencies were created. If Congress intended the Copyright Office to regulate cybersecurity it would have provided an explicit grant of authority to do so - not implied such an authority obliquely in 17 USC § 1201.

The Federal Aviation Administration does not opine on the electronic registration of works with the Copyright Office merely because some creators fly on airplanes. Similarly, the Copyright Office should not attempt to regulate the safety of airplanes because the machines that create airplane parts run on code that is eligible for copyright protection.

Stratasys' reliance on justifications unrelated to copyright law serves to clarify that there are no copyright-related harms in granting this exemption request. As such, Commenter respectfully requests that the Copyright Office recommend granting the proposed exemption.

ITEM D. TECHNOLOGICAL PROTECTION MEASURE(S) AND METHOD(S) OF CIRCUMVENTION

The TPMs in question for the proposed exemption are identical to those involved in current (and recommended for renewal) Class 26. They are computer programs that operate 3D printers that employ TPMs to limit the use of feedstock, when circumvention is accomplished solely for the purpose of using alternative feedstocks and not for the purpose of accessing design software, design files or proprietary data.

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[5] *Id.* at 10.
[6] *Id.*
[7] *Id.*